

**EXAMINING THE WAYFAIR DECISION AND ITS
RAMIFICATIONS FOR CONSUMERS AND SMALL
BUSINESSES**

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

JULY 24, 2018

Serial No. 115-65

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

33-411

WASHINGTON : 2018

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EXAMINING THE WAYFAIR DECISION AND ITS RAMIFICATIONS FOR CONSUMERS AND SMALL BUSINESSES

TUESDAY, JULY 24, 2018

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The committee met, pursuant to call, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte [chairman of the committee] presiding.

Present: Representatives Goodlatte, Chabot, Gohmert, Jordan, Poe, Labrador, DeSantis, Buck, Johnson of Louisiana, Biggs, Rutherford, Handel, Rothfus, Nadler, Jackson Lee, Johnson of Georgia, Biggs, Rutherford, Handel, Rothfus, Nadler, Lofgren, Jackson Lee, Johnson of Georgia, Cicilline, Lieu, Jayapal, and Schneider.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian and General Counsel; Dan Huff, Counsel, Subcommittee on Regulatory Reform, Commercial and Antitrust Law; Alley Adcock, Clerk; Matthew Morgan, Minority Staff; Danielle Brown, Chief Legislative Counsel and Parliamentarian; Slade Bond, Minority Chief Counsel; Rosalind Jackson, Minority Professional Staff; and John Doty, Minority Professional Staff.

Chairman GOODLATTE. Good morning. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare recesses of the committee at any time. We welcome everyone to this morning's hearing on "Examining the Wayfair Decision and its Ramifications for Consumers and Small Businesses." And I will begin by recognizing myself for an opening statement.

Welcome, to you all, to this hearing examining the Wayfair decision and its ramifications. On June 21, 2018, the Supreme Court reversed the long-standing rule that under the Constitution's Commerce Clause, the States may not impose sales tax collection duties on remote sellers with no physical presence in the taxing State.

The court could have left resolution of this issue to Congress, to which the Commerce Clause grants the ultimate authority, to regulate interstate commerce, but the court said it was eliminating the bright-line, physical presence standard because it was wrong to "ask Congress to address a false constitutional premise of this court's own creation." This reasoning is exactly backwards.

For most of American history, it was thought a principle of universal application that the statutes of one State have no force or effect in another. It was only with the New Deal that the courts began weakening the traditional safeguards against extra-territorial regulation to make way for big government.

Accordingly, the true judicial creation was not the physical presence standard, but the relaxation of its strictures, which were thought inherent for most of American history. We are in a new world now.

The courts close and incomplete decision in *Wayfair* has the potential to unleash chaos for consumers and remote sellers, particularly small business sellers. There are over 10,000 sales tax jurisdictions, each with different rates, rules, exemptions, product definitions, thresholds for liability, and the power to audit. Compliance software is, as the dissent noted, still in its infancy, and its capabilities and expense are subject to debate.

The potential costs of audits by thousands of jurisdictions could be staggering. The Government Accountability Office recently reported on the asymmetry between States' low-cost enforcement tools, like letter audits, and the cost to small businesses that must often hire outside counsel to represent them in foreign jurisdictions.

Just as worrying, retroactive taxation remains a real threat. Already, six State jurisdictions have laws on the books with effective dates that look back as much as 2 years. Remote sellers could thus be held liable for sales taxes that they never collected from consumers, meaning the taxes would come out of the sellers' pockets. Just this morning, Bloomberg reported that Rhode Island appears to be committed to retroactively enforcing its remote sales tax law.

These are not just my fears. Compliance problems were front and center at a recent emergency meeting of States that participate in the streamlined Sales and Use tax agreement. Topics included giving large online retailers more time to come into compliance. Other participants rejected that idea, saying it could invite lawsuits based on discrimination.

Nor was there a consensus among States as to whether a seller could lose the economic nexus sufficient to support tax liability after a period of time. In other words, a small online seller's liability could ebb and flow constantly, creating a highly unstable compliance environment.

Another critical question at the meeting was how States will handle overseas sellers. As highlighted recently in the *Atlantic* magazine, States cannot effectively enforce their tax laws against them. This effectively retains, exclusively for overseas sellers, the alleged tax subsidy afforded by the Supreme Court's prior physical presence rule, reducing the competitiveness of U.S. businesses.

Similarly, the multistate tax commission has released a memo raising numerous technical questions that must be answered. For example, should tax exempt sales count toward any small business thresholds? Do State thresholds for determining tax liability apply to local jurisdictions? Should States block class action lawsuits for incorrect collection by retailers struggling to comply? A senior official warned that retailers should not be getting different answers from different States.

With so many unanswered questions, both sellers and States need time to figure out how to proceed. We need to also consider the ripple effects of removing the physical presence standard in other areas of State taxation and regulation. Practitioners told the Wall Street Journal that States are more likely to take an aggressive approach on income taxes now that they have the Wayfair decision. That, in fact, has already begun.

On July 12, 2018, Wells Fargo announced an earnings miss due, in part, to a \$481 million charge for business activity taxes States may impose now that the physical presence standard is gone.

Likewise, there are concerns that States will more aggressively tax things like financial transactions, streaming video, and legal services. Even a State that disclaims these options today may change its view in a budget crunch.

Finally, what are the broader ramifications of the Wayfair decision for innovation? The court acknowledged that the physical presence rule has permitted startups to use the internet as a means to grow, without exposing them to the daunting complexity and obstacles of nationwide sales tax collection. What does it mean for the e-commerce world that this barrier to entry now looms large? It is imperative that Congress promptly assess these issues.

Today's panel of witnesses can provide a wide spectrum of views from those who will bear the burdens created by the Wayfair decision, and those who are otherwise expert in identifying what those ramifications may include to those who have the authority to impose these burdens.

Once we hear from the witnesses, we will be in a better position to assess whether and how Congress should intervene, as is our prerogative per the Wayfair decision.

I thank our witnesses for being physically present today, and I look forward to the discussion. It is now my pleasure to recognize the ranking member of the Judiciary Committee, the gentleman from New York, Mr. Nadler, for his opening statement.

Mr. NADLER. I want to thank you, Mr. Chairman, for holding today's hearing. In 1992, the Supreme Court held in *Quill v. North Dakota* that a State may collect sales taxes only from businesses with a physical presence in the State. The internet, at the time, was just a nascent technology. In the intervening years, internet commerce has grown to be a huge share of the economy.

As a result, States have lost substantial revenues from sales taxes they were unable to collect. In addition, brick-and-mortar stores are obligated to collect sales taxes from all customers, putting them at a severe competitive disadvantage with their internet-based counterparts that do not have to collect the tax.

In an effort to respond to these concerns, various legislative proposals have been introduced over the years, including the Marketplace Fairness Act, which I actively supported. Although one of these bipartisan measures passed the Senate overwhelmingly in 2013, our committees, unfortunately, failed to consider these bills, despite strong bipartisan support.

The need for Federal legislation is now in question, however, because of last month's Supreme Court decision in *South Dakota v. Wayfair*, which held that a State may collect taxes from any activ-

ity with a substantial nexus to the taxing State, thereby overruling Quill's physical presence requirement.

In the wake of this decision, the committee, today, revisits remote sales tax issues. I believe there are two principles that should guide this discussion. First, the Federal Government should not intrude on State tax policy. Although Congress has a constitutional responsibility to ensure the orderly function of interstate commerce, it is also obliged to respect the sovereignty of the States to determine their own Sales and Use tax policies in accordance to the input of local electorates.

Second, we should recognize that we already have constitutional guardrails in place to protect against discriminatory State tax policies. The Commerce Clause prevents economic discrimination by States and safeguards against discriminatory tax laws that burden interstate commerce.

It does not, however, relieve remote sellers from their "just share" of State taxes, nor does it justify the congressional intrusion on the States' plenary authority to collect these taxes or to reform critical public functions through State revenue. With this in mind, the courts are well-equipped to consider the constitutionality of State tax collection.

Furthermore, the Wayfair decision provides States with a clear roadmap for passing and enforcing laws that do not discriminate against or unduly burden interstate commerce. These features include a safe harbor for sellers with limited transactions within the State, prohibitions against retroactive enforcement, and adopting simplified and uniform tax systems that reduce administrative and compliance costs.

In the months since the Wayfair decision, States have begun an extensive and thoughtful conversation on strategies to minimize administrative burdens and uncertainty for remote sellers. Twenty-four States are already members of the streamlined Sales and Use tax agreement, a voluntary interstate compact that adopts the best practices among the States through distribution of free tax software, simple, uniform standards, and requirement that remote businesses are only subject to a single audit for each member State.

There is also a competitive market of certified service providers that, in addition to collecting and remitting sales tax for remote sellers, also provide businesses with immunity from audit liability. The service is free in the 24 States that are members of the streamlined sales tax agreement. In the other States, businesses may pay for these services at competitive rates.

There is a general consensus among tax experts that States will follow the court's roadmap in Wayfair and abandon prior enforcement models such as reporting and notification. For example, Hawaii, one of the few States that has considered retroactive enforcement, has already announced the reversal of this policy.

Congress, of course, has a role to play, but in the absence of examples of discriminatory enforcement by the States, I am skeptical of the need for congressional intervention on the basis of speculative arms.

In closing, I thank the chairman, as well as our extensive panel of witnesses, who represent a broad array of view on this matter, and who will help us have a substantive discussion rooted in fact.

Unfortunately, the same cannot be said for President Trump, who weighed in yesterday morning via Twitter, and who completely misrepresented and misunderstood several key facts in just one tweet.

He wrote, "The Amazon Washington Post has gone crazy against me ever since they lost the Internet Tax Case in the U.S. Supreme Court 2 months ago."

Let us set aside the fact that Wayfair was decided last month, not 2 months ago, that Amazon was not a party to the case and did not oppose the decision, that the Washington Post, although owned by Jeff Bezos, is not part of Amazon at all.

The truth is that many online retailers, including Amazon, already collect sales taxes in States that require it, and the online retailers that did not collect these sales taxes prior to Wayfair have already begun doing so.

With these facts clarified for the record, I look forward to today's hearing and I yield back the balance of my time.

Chairman GOODLATTE. Thank you, Mr. Nadler. I would now like to recognize the ranking member of the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Mr. Cicilline of Rhode Island, for his opening statement.

Mr. CICILLINE. Thank you, Mr. Chairman, and thank you for holding today's hearing. Before coming to Congress, I served as the mayor of a city, the city of Providence. I witnessed first-hand how our local businesses have suffered because of this sales tax loophole created by *Quill v. North Dakota*.

For far too long, this unfair and unjust system has discriminated against local commerce, the economic lifeblood of our communities. But according to a survey conducted by the Institute for Local Self-Reliance, the vast majority of independent retailers around the country report that the online sales tax loophole undermines their sales. This result is confirmed by other findings that consumers tend to make purchases from large, online companies over local businesses, just to avoid paying sales tax.

For over two decades, this anti-competitive tax shelter has not only devastated small business on Main Street, but it has also been an economic catastrophe for working families, as more and more small businesses and retailers are shuttered every month. Due to the tax loophole for online purchases, the number of job losses in the retail sector have been staggering.

Since 2001, 18 times more jobs were lost in the retail industry than in the coal mining industry, according to U.S. Bureau of Labor statistics. This included 36,000 jobs that were erased in the last year alone by nearly 700 retail bankruptcies, which were up 30 percent from the prior year. This year, retail defaults have soared to record levels, accounting for a third of all corporate defaults.

But last month, the Supreme Court gave States and locally-owned businesses a huge win in *South Dakota v. Wayfair*, where it eliminated the physical presence requirement for sales tax collection, holding that States may collect sales tax from out-of-State

sellers with substantial activity within the State. As the court noted in *Wayfair*, the tax shelter created by *Quill* costs States billions of dollars in lost revenue every year.

By providing equal treatment for all businesses through an even playing field, the *Wayfair* decision will significantly reduce State budget shortfalls, which is critical for investment and infrastructure projects like bridges, roads, and broadband internet access, the projects that our communities need to flourish in the 21st century economy.

Eliminating the physical presence requirement also results in lower taxes. Some States, including Wisconsin, have already signed laws into place to ensure that revenue collected through this bill will result in tax reductions. Going forward, I would like to associate myself with the comments of ranking member Nadler that the Federal Government should not intrude on State tax policy.

Prior to the *Wayfair* decision, there has been bipartisan, bicameral consensus that Congress must even the playing field for Main Street sellers. This includes the Marketplace Fairness Act and Remote Transactions Parity Act, which would have authorized States that have simplified their tax laws to collect sales tax.

While I have been supportive of these efforts and remain committed to working with all the stakeholders to ensure that we have a sales tax system that works for everyone, the sad fact is that under Republican leadership, this committee has been the place where bills go to die.

Inaction on this bipartisan issue has been no different, so I am skeptical that my Republican colleagues will seek to legislate on this issue in a manner that does not jeopardize the health and well-being of our local communities.

With that concern in mind, I look forward to the input of today's panel of witnesses, who represent a variety of views across the ideological spectrum. And before closing, I would like to take a moment to echo the sentiment of my colleague, ranking member Nadler, regarding the tweets by President Trump yesterday regarding Amazon.

Pointing to what the President considered negative coverage in the Washington Post on North Korea, the President of the United States also threatened Amazon with antitrust enforcement. As I have said in the context of the President's comments on other antitrust matters, this type of discussion has no place in antitrust enforcement, which is a civil law enforcement matter.

I have previously said that this committee should do more to actively consider the effects of platform dominance on our competition system, on innovation, and small businesses. Last year, I, in fact, requested a hearing on Amazon's acquisition of Whole Foods. But President Trump's brazen attempt at political interference in this area is completely unacceptable, and we should all say so. And with that, Mr. Chairman, I yield back the balance of my time.

Chairman GOODLATTE. We welcome our distinguished witnesses, and if you would all please rise, I will begin by swearing you in. Please raise your right hand.

Do you, and each of you, solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the

truth, so help you God? Thank you. Let the record show that all of the witnesses answered in the affirmative.

Our first witness is Mr. Grover Norquist. Mr. Norquist is the president of Americans for Tax Reform. Mr. Chad White is the owner of Class-Tech-Cars in Virginia. Mr. Lary Sinewitz is the executive vice president of BrandsMart and testifying today on behalf of the National Retail Federation.

Mr. Bartlett Cleland is the general counsel and chief strategy and innovation officer of the American Legislative Exchange Council, or ALEC.

The Honorable Curt Bramble is a member of the Utah State Senate and previously served as president of the National Conference of State Legislatures.

Mr. Andrew Moylan is the executive vice president of the National Taxpayers Union Foundation. Mr. Joseph R. Crosby is a principal at MultiState Associates, Incorporated. And our final witness is Mr. Andrew J. Pincus, a partner at Mayer Brown.

All of your written statements will be entered into the record in their entirety and we ask that you summarize your testimony in 5 minutes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, that is it, time is up. And given that we have eight of you on this panel, we work very hard to accommodate as many different viewpoints as possible, we really need you to help us with the enforcement of that rule.

Mr. Norquist, welcome. You may begin.

STATEMENTS OF GROVER NORQUIST, PRESIDENT, AMERICANS FOR TAX REFORM; CHAD WHITE, OWNER, CLASS-TECH-CARS, INC.; LARY SINEWITZ, EXECUTIVE VICE PRESIDENT, BRANDSMART ON BEHALF OF THE NATIONAL RETAIL FEDERATION; BARTLETT CLELAND, GENERAL COUNSEL AND CHIEF STRATEGY AND INNOVATION OFFICER, AMERICAN LEGISLATIVE EXCHANGE COUNCIL; THE HONORABLE CURT BRAMBLE, PAST PRESIDENT, NATIONAL CONFERENCE OF STATE LEGISLATURES; ANDREW MOYLAN, EXECUTIVE VICE PRESIDENT, NATIONAL TAXPAYERS UNION FOUNDATION; JOSEPH CROSBY, PRINCIPAL MULTISTATE ASSOCIATES INCORPORATED; AND ANDREW PINCUS, PARTNER, MAYER BROWN

STATEMENT OF GROVER NORQUIST

Mr. NORQUIST. Sure. Thank you very much, Mr. Chairman, Mr. Ranking Member. The Supreme Court made a big mistake, and it undermined two important principles in American history. The first is no taxation without representation.

One of the challenges we have here is that politicians, who could perfectly well have collected all the sales tax they wanted from people who lived in their State by collecting it from them, decided they would rather have some business in another State do the collecting, so the politician does not have his finger on that. And then, they yell at them and tell them they are going to go after them if they do not collect it.

So, they could always have collected this money from people in their city, in their State. They thought it would be politically easier not to irritate the people who could vote against them, but to go after businesses that cannot vote against them. And we had a whole revolution on this question, about whether it is a good idea to have taxation without representation.

Second, and this, of course, is not just for sales taxes. This was never about sales taxes. I have been focused on it since I was on the advisory commission on electronic commerce that reported in 2000, I guess 1997 to 2000. When that happened, lobbyists for allowing States to talk tax across State lines came and said, "What would it take to get you to reduce your opposition?"

I said, "Well, I am really concerned that you guys will do this to corporate income taxes and individual income taxes as well. If you were to support BATSA or some of the restrictions on that, it would make it less of a problem, since this has nothing to do with the kind of numbers you guys are imagining, in terms of revenue.

And the answer was, "We would never do that." This is not about sales tax. We could not care less about sales tax. It has always been about exporting the corporate income tax into other States, and loser States, which North Dakota was at the time, decided it could wait instead. But back then, it saw itself losing people and businesses out, and they wanted to be able to tax outside of North Dakota into successful States.

The other is tax competition. We want good government competition between the 50 States, and among the 50 States. And allowing people to compete on lower taxes, less regulation, better education, better roads, is a great way of getting good government.

To tell States they do not have to compete on those bases, because they can export their failures, tells every corrupt city mayor, every incompetent Governor, "You do not have to have good government, you just have to be able to expand who you tax." And taxing people who cannot vote against you is a very interesting idea.

The Europeans have been watching what happened with this, and they have decided they want to tax our high-tech companies. And I do not understand how the United States government is going to go, "You cannot do that, only we are allowed to do that. You cannot reach into a State and tax a successful high-tech company. Only Illinois can do that, and other States."

So, we have really put ourselves in a difficult position. For what? We were told this was going to be \$20 billion in increased revenue. I hear \$30 billion now. I just talked to somebody from a State that said it is going to be \$6 million in that State. We are rearranging the relationship between States as to whether they need to provide competent government, whether they can tax people who cannot vote against them in order to get a very small amount of money into those governments.

I think it is very important that, given the mess we are in now, thank you, Supreme Court, that we delay implementation until Congress has a chance to try and undo some of the damage that this decision made. I think it is important that we not go after smaller businesses, and that the amount of sales it takes to be a relevant factor and to have an imaginary nexus in South Dakota is not the same number for California, because it is a larger State.

And it is also important you guys nail down all of the other problems that flow from this.

I was talking about the Business Activity Tax Simplification Act, which would help on corporate businesses. States are trying to export their regulation, which is why Representative Sensenbrenner's legislation, No Regulation Without Representation, is another piece of this pie. Efforts to make sure that we can have one State and only one State tax everything, from streaming videos to music.

This pandora's box that has been opened up has one hope, I guess, and that is that you guys get together and put lines around the damage that can flow from this. There is going to be a bunch of damage. It is not going to be helpful, but you can at least begin to reduce it.

This is all about a bunch of politicians at the State and local level lying to their constituents that there was a magic bean collection somewhere that was going to allow them to fund everything. That is not there. They will now discover that, but they have done a lot of damage in telling that fib and in opening up where physical nexus is no longer legally required. Something very much like physical nexus needs to be put in its place.

Chairman GOODLATTE. Thank you, Mr. Norquist. Mr. White, welcome.

STATEMENT OF CHAD WHITE

Mr. WHITE. Chairman Goodlatte, Ranking Member Nadler, and members of the Judiciary Committee, thank you for inviting me to testify today. My name is Chad White. I am the owner of Class-Tech-Cars, an online small business specializing in reproduction automotive parts, located in Timberville, Virginia.

I want to thank Chairman Goodlatte and the committee for holding this critical hearing to address the small business impacts of the Supreme Court's recent decision in *Wayfair v. South Dakota*.

Over 30 years ago, I left a career in the hospitality industry to take a job in a friend's automotive body shop and pursue my passion for classic cars. Over the next 20 years, I helped grow that business into a top 10 national vendor for Ford products. But I had always dreamed of starting my own business and making my mark in the automotive world.

I began selling items online out of my home in 2001. Over the last 17 years, I have been able to grow my business to 6,500 active listed items, specializing in American-made muscle cars of the 1960s and 1970s.

With the assistance of online platforms like eBay, Class-Tech-Cars has been able to market and sell products across the country and throughout the world. The internet is a tremendous tool for small businesses, but make no mistake, starting and growing a small business remains a difficult task.

Every expenditure I make has to be carefully considered. I currently employ eight individuals and committed to grow my business, but the Supreme Court's recent decision in *South Dakota v. Wayfair* gives me and millions of other small business owners across the country pause as we consider what lies ahead for internet-enabled entrepreneurs.

There are many challenges to setting up a small business, but one enormous burden small businesses have not yet had to bear is the threat of having to collect and remit sales taxes in roughly 12,000 jurisdictions across this country.

Let me be clear, we collect taxes and remit taxes like any other business in those States where we have a physical presence. I handle this process through a part-time employee who spends a few hours a week calculating tax and remitting quarterly. I honestly do not know how we will handle having to increase this collection and remittance compliance from a few locations to thousands across the country.

I have heard the pitch that free software can solve the problem. Well, we all know that in life, nothing is free. Software can get expensive. Collection and remittance is one thing but think about the risk of audits by far away States and compliance measures in thousands of jurisdictions across the country.

Many online small businesses sell in many multiple ways, from their physical store, over the phone, on the website, or on marketplaces such as eBay. Certified service providers auto-protection guarantees fall flat when a State of local jurisdiction simply claims there is misrepresentation or fraud.

Once a small business receives a demand letter from a faraway jurisdiction, they are left with a lose/lose decision, or just paying to try to defend themselves in a foreign tax court.

Small businesses are the lifeblood of the American economy, and the internet has allowed American small businesses to start up and grow in unimaginable ways. Like so many others, I risked in starting my business, to build it with hard work and perseverance.

As confusion sets in after the Wayfair decision, I worry about what comes next for my business. I worry about compliance, about cost, and about out-of-State audits. I have other small business entrepreneurs that have asked me if it is even worth it to start an online business in light of these new tax burdens. I wonder what my choice would have been if I had started my business today.

Chairman Goodlatte, Ranking Member Nadler, and members of this committee, thank you for, again, for the opportunity to testify on this critical issue. As you examine the challenges ahead post Wayfair, I urge Congress to pass legislation to protect small businesses like mine and millions of others across the country having to endure this uncertainty and the burdensome tax requirements and audit risks.

Some small businesses are the growth of the engine of our economy, and without important protections, we risk preventing new entrepreneurs from starting successful online businesses. Thank you, and I look forward to taking your questions.

Chairman GOODLATTE. Thank you, Mr. White. Mr. Sinewitz, welcome.

STATEMENT OF LARY SINEWITZ

Mr. SINEWITZ. Chairman Goodlatte, Ranking Member Nadler, and members of the committee, my name is Lary Sinewitz. I am the Executive Vice President of BrandsMart, a 41-year-old family-owned business headquartered in Fort Lauderdale, Florida. I am testifying today on behalf of the National Retail Federation. I am

also a member and on the board of directors of the Florida Retail Federation and the Georgia Retail Association.

BrandsMart has 10 stores located in south Florida and Georgia. We also have internet sales. BrandsMart sells appliances, TVs, electronics, mattresses, furniture, and other household items. Approximately 95 percent of our sales are through our brick-and-mortar stores.

A number of years ago we invested in our website, primarily as a means of advertising and providing information on our products to our local customers. About 6 to 7 years ago, we added a shopping cart to our website, and began to sell over the internet by participating in some of the marketplaces and some other third parties, to glean the best deals to offer customers for a small commission from the sellers.

Today, we have some sales in all 48 contiguous States. Together, these sales still make up less than 5 percent of our overall sales. Although we are hopeful that our internet business will grow, as has been the trend for the overall retail industry, our biggest concern has been protecting sales in our brick-and-mortar stores.

As an appliance retailer, BrandsMart has experienced a significant loss of sales from customers who come into our stores to "showroom." That is, they come into our stores to learn about the products from our experienced sales personnel.

With the growth of mobile sales, we regularly find the customers will come into the stores, learn about the products, and then purchase the products online in order to save the sales tax. State and local taxes in Florida and Georgia can be as much as 7 to 9 percent, so customers that are not charged sales tax can get a significant savings on a high-priced appliance or a television set.

Sometimes, the customer will order the product on the phone right in front of one of our sales people, who has just invested a significant amount of time in educating the customer. Like other retailers, we will often engage in price matching, but our profit margins are slim, and we cannot afford to absorb the price of tax. Therefore, online sellers have not had to collect that.

BrandsMart is looking forward to competing in the marketplace in the post-Wayfair environment. We believe that when we compete on price and good customer service without having to overcome a discriminatory tax burden, we will be far more successful.

There are challenges to meeting sales tax collection requirements for remote sellers that have not been collecting sales tax prior to the court's decision, and BrandsMart is now figuring out how to face these challenges. In fact, among the NRF members that have only one or two stores, it is weird for them not to have a website in which they may have some number of sales out of State.

In discussions at meetings of the NRF small business retail council, where most of the retailers are actually smaller than BrandsMart, concern has been raised that if there were not Federal legislation that included free software, among other protections, the cost of compliance might be so great that it was not worth selling into other States where a retailer did not have a sufficiently high level of sales.

However, after the Supreme Court issued its decision, I checked out and investigated software packages that are now available,

pricing in the services that were offered. And I feel confident that BrandsMart can quickly come to compliance with whatever collection requirements may be imposed for a very modest fee, and this will give us the ability to compete and expand our internet sales.

As a starting point to our discussions, the software providers asked us in how many States, other than Florida and Georgia, we have more than 200 sales. Of the 46 States in which we have remote sales, 34 met this minimum level of sales. The packages that we are negotiating with our software provider will calculate and remit our sales tax, file all the returns, and be the first point of contact for any kind of audit with these 34 States and appropriate localities within those States, will cost less than one tenth of 1 percent of our remote sales in the first year, and that is only because there are startup costs. And after the startup costs, it will actually become more cost efficient.

The startup costs include mapping of thousands of products and they estimate it will take them, literally, just 2 weeks to complete this process. More importantly, these software companies are monitoring the day-to-day changes in State and local taxes and will provide me with the right amount of sales tax at the time of the sale.

Having participated in discussions with several different software companies, I can tell you there were lots of different ways that the companies priced their services, but it was very clear that they were interested in developing a plan that was economically successful for both the retailer and the software company.

So, what once loomed as this potential compliance nightmare now is just an incidental cost of doing business that should not prevent BrandsMart or other remote sellers from expanding in their internet presence.

We have approximately 1,700 families that work for BrandsMart, and we ask for your help, and we ask for the fairness, so that these 1,700 families will continue to survive.

Chairman GOODLATTE. Thank you, Mr. Sinewitz. Mr. Cleland, welcome. Turn on your microphone.

STATEMENT OF BARTLETT CLELAND

Mr. CLELAND. Thank you, Mr. Chairman, Ranking Member Nadler, and members of the committee. I wanted to give a brief background on ALEC. We are the Nation's largest non-partisan voluntary membership organization of State legislators. So, we are exactly where the rubber hits the road on this issue.

ALEC is dedicated to three primary principles: limited government, free markets, and federalism. We have had a long history working with State and Federal legislators on the issue of remote taxation. This hearing is one of the highlights. We filed an amicus brief in the Wayfair case, another highlight.

We do a State ranking, of which, hat tip to Mr. Bramble, Utah has been the number one ranked State for 10 years running on taxation. Hopefully, they are not about to jeopardize that in our rankings. I have asked if these, in my written testimony, please be included on the record, but I ask again if the Chairman is still inclined to include these documents?

So, where are we, post-Wayfair, and what should we do? Let us take a look with ALEC's limited government, free market, and federalism principles in mind.

On federalism: some have asserted that, in result of the Wayfair case, is a step toward or a reinforcement of federalism. Actually, at best, it is what I call "false federalism." It is the knee-jerk opposition to the Federal Government doing anything.

In fact, we know from history that was never the intent. Unrestrained States able to loot other States has never been allowed, but for a brief period under the Articles of Confederation. For those of you who have forgotten your history from seventh and eighth grade, that was the period where the Founders had to run back to Philadelphia and draft what, today, we call the U.S. Constitution, the Articles of Confederation being a failure exactly because of States interfering with the business of other States. The Commerce Clause was the result. Put in the Commerce Clause to stop States from reaching across the States lines into other States and interfering with interstate commerce.

Limited government: post-Wayfair, as we have heard from the chair and others, government is virtually unrestrained. Government now can be as big as the internet reaches. Government even over those who have no recourse against it. But, forgetting that time of the Articles of Confederation, this is the first time in our jurisprudential history, in 330 years, that we live in a place where you are now able to be taxed without having representation. First time that right was guaranteed was in 1689 in the English Bill of Rights.

The common phrase that started in England and was picked up here later was, "No taxation without representation." The modified phrase was, "Taxation without representation is tyranny." That is as true today as it was then.

Finally, our third point: the free markets. The current situation, before Wayfair and today, was confusing and complicated. Simplification is needed with bright lines, clear definitions, like some of the proposals we have seen from Congress.

In addition, merchants should be reimbursed fully and completely for any rules that are put in place. That not only includes the real costs, but also for the liability they bear if they do not collect the right amount of tax or they do not remit the right amount of tax.

Essentially what has happened in history is government has conscripted merchants into being servants of the government. It is only fair that they get reimbursed for their efforts.

In conclusion, Congress needs to act, and they need to act now. In my written testimony, I suggest a way forward. There are other ways forward, many of which ALEC would be supportive of.

But in the end, we need to reinstate real federalism. We need to limit government reach to what has always been intended in our U.S. Constitution, at least demanding that there is representation before taxation.

Finally, we must require simplification and reimbursement for merchants. Thank you, and I am happy to answer any questions.

Chairman GOODLATTE. Thank you, Mr. Cleland. Mr. Bramble, welcome. I should say Senator.

STATEMENT OF THE HONORABLE CURT BRAMBLE

Mr. BRAMBLE. Thank you, Mr. Chairman and Ranking Member Nadler. Members of the committee, my name is Curt Bramble. I am a member of the Utah Senate. I am also the past president of the National Conference of State Legislatures and a lifetime member of the American Legislative Exchange Council.

In addition to my public service, I have spent the last nearly four decades as a CPA, where I have defended taxpayers and small businesses in tax matters of varying magnitudes. I look forward to sharing my insights today, but I need to start by setting the record straight on a couple of points.

Sales tax is a tax on the purchaser. The citizens of a State elect their State legislatures that impose the States sales tax provisions. It is those purchasers that are the taxpayers. A business has to collect and remit, that is true, just as it collects and remits withholding taxes and complies with other regulations.

Six-thousand, 10,000, 12,000 taxing jurisdictions. We heard one witness today talk about that. The State of Virginia has 95 counties. They have taxing authority. In my own State, there are 240 cities, there are 29 counties, there are some 400 special service districts. All of those go in to make up that number of 12,000, but you only pay tax to one entity, and that is the State tax commission. And there is only one entity that has audit authority.

In 1, elected policymakers, tax administrators, and retailers from over 40 States developed a sales tax system to address the concerns of Quill, but Congress failed to act. In 2003, Streamlined Sales Tax petitioned Congress for authority to require out-of-State sellers to collect and remit, but Congress did not act. Marketplace Fairness, Main Street Fairness, Congress failed to act. The Remote Transactions Parity, which States reluctantly supported because it seeded some autonomy, Congress failed to act.

In fact, the chair of the National Governors Association, president of the National Conference of State Legislatures, met with leadership of this committee to urge congressional action. RFTPA was not even afforded a hearing or a chance for a vote. Congress did not act.

In recent years, State lawmakers across the country have enacted conservative economic policies by championing tax reform that closes loopholes and special interest carveouts in favor of flatter and lower overall tax rates for everyone. We did that in Utah last week in a special session, where I had the privilege of sponsoring the legislation to mandate collection of taxes beginning January 1st of 2019, and we lowered other taxes to make it revenue-neutral. That is good tax policy: expanding the base, broadening the base, and lowering the rate.

And yet, through all of this, in 26 years since Quill, Congress has not acted. I am here today to ask Congress and you, Mr. Chair, to continue doing what this committee and congress has done best on this issue over the last 26 years. And that is nothing, to not act.

The reason for that: when the Supreme Court found that physical presence was not a violation of the Commerce Clause, States across the country have now begun to deal effectively, deliberately with this issue. This is something that States can effectively address. It is interesting that it was a nine-zero decision that Quill

was bad policy. It was a five-four decision saying that the Supreme Court would fix that which it broke, and it should not be Congress that does that.

In conclusion, it is true that red States, blue States, purple States, States across the country, we are not looking for a tax advantage. We are looking for tax parity. The chaos that has been talked about in this committee, the chaos that has been spoken of by witnesses today, that chaos exists with the tens of thousands of businesses that have closed, the hundreds of thousands of employees who have lost their jobs because they cannot compete adequately on the internet.

It is those small businesses that, as a State legislator, I am elected to represent. It is those small businesses that are experiencing chaos, the chaos of not being able to compete in a marketplace because online retailers do not have to collect the 6 to 10 percent tax, and that 6 to 10 percent tax, they are fighting desperately to maintain that competitive advantage.

In conclusion, this is a tax equity issue. Businesses that want to take advantage of the market in my State and in every State should comply with the regulations in those States no different than they do with automobiles or alcohol, tobacco, or any other commodity. With that, I thank you for the opportunity and look forward to questions.

Chairman GOODLATTE. Thank you, Senator. Mr. Moylan, welcome.

STATEMENT OF MR. MOYLAN

Mr. MOYLAN. Thank you, Mr. Chairman, and thank you for the invitation. My name is Andrew Moylan. I am executive vice president of the National Taxpayers Union Foundation, a nonpartisan, protaxpayer research and educational organization, and I am also director of the interstate commerce initiative at the National Taxpayers Union, a policy project that focuses on the effects of States attempting to exercise power outside their borders.

In *South Dakota v. Wayfair*, the Supreme Court undermined the foundation for decades' worth of growth and innovation when they decided to throw out the precedent that State taxing authority must be confined to a State's borders.

With the stroke of a pen, the court rewrote our understanding of State involvement in their State commerce and opened the floodgates to burdensome levies on businesses large and small, regardless of location. And now, chaos is brewing. States are moving rapidly to take advantage of an expansive view of the new power granted to them by the court, with little regard for administrative simplicity, and it is my view that Congress should move swiftly to prevent further problems, by enacting a moratorium on State responses to *Wayfair*.

You will hear from some panelists that there is no chaos, that States are going to proceed in an orderly fashion, that they will minimize compliance burdens while returning additional revenue to taxpayers in the form of tax cuts. Let us suppose, for the moment, that that is true. Even if we assume that that is true, there are innumerable unanswered questions that, I believe, demand congressional action.

For example, many States require retailers to purchase a sales tax bond to ensure full and prompt payment of sales tax obligations. Post-Wayfair, it is unclear if a business selling online must now secure a sales tax bond in each State into which it sells. Sales tax bonds can cost thousands of dollars and are often linked directly with business licensing requirements, which are similarly murky post-Wayfair.

Another example: many publicly traded companies face significant new tax bills as a result of Wayfair, but the deadline for public filings about those burdens for the second quarter is in just 2 weeks, putting businesses in the impossible position of being legally responsible for reporting on costs that are essentially unknowable with precision in such a time frame. And this is just a taste of the administrative complexities that abound post-Wayfair, and that is before we depart from any supposition that States will, in fact, behave.

Now, the reality, of course, is that States cannot be relied upon to proceed with caution. After all, New Jersey is still the same State that held trucks hostage at the State border to extract business taxes. Nebraska is the same State that assessed tax to a business whose only connection to it was to have driven through it on an interstate highway.

Massachusetts is still the same State that attempted to assert that the delivery of a browser cookie while browsing its website constituted a basis for taxing an out-of-State business. Given this history, taxpayers can be forgiven for holding onto their wallets and watches.

And thus, it is my view that retroactivity remains a serious threat. While some States have statutory language ensuring they do not collect retroactively, many do not, and taxpayers must simply rely on State forbearance.

Our research shows that at least eight States lack a statutory ban on retroactivity and have also yet to commit publicly not to collect retroactively, putting businesses at risk not just of tax assessment, but from audit, as well.

And what is more, the Wayfair genie cannot be put back in a bottle labeled “Sales Tax Only” now that the court has let it out. Many practitioners agree that Wayfair adds fuel to the fire of States pursuing tax schemes across the board based not on tangible, physical connections, but on nebulous measures of economic presence.

One very vivid illustration of that fact came when Wells Fargo announced that it had set aside nearly half a billion dollars for its income tax reserves as a direct result of Wayfair and what they see as likely future tax assessments.

The salt in these wounds is that the majority’s opinion was relatively vague and highly deferential to State tax power, and so it leaves few options for taxpayers to secure injunctive relief against an unconstitutional State scheme. In order to effectively challenge the constitutionality of a law, it would require business to face assessment and sue, taking years and millions of dollars, a daunting proposition for even the largest of businesses.

Thus, it is my view that Congress should immediately move to enact a moratorium to help provide the time and space necessary for both Congress and the States to meet the challenges I have laid

out here and others to be discovered. Eliminating the mad scramble underway today would do wonders for our ability to surface and appropriately address issues like those discussed today and to continue the hard work of crafting a more comprehensive solution to effectively govern interstate commerce.

A moratorium is, in my view, a modest step. It is a necessary step, and it is a step that I hope that this committee gives full consideration in the near future. Thank you, Mr. Chairman.

Chairman GOODLATTE. Thank you, Mr. Moylan. Mr. Crosby, welcome.

STATEMENT OF JOSEPH CROSBY

Mr. CROSBY. Thank you, Mr. Chairman. Congressman Johnson and members of the committee, I am Joe Crosby, CEO of MultiState Associates. I advise many businesses and trade associations on State tax policy matters, but I appear here today on my own professional behalf.

I have only one point to make in my testimony today: there is no immediate problem requiring congressional action in response to *South Dakota v. Wayfair*. I applaud Chairman Goodlatte for calling this hearing. It is important that these issues are put on the table, that there is a broad and thorough discussion of them, and most importantly to dispel, hopefully, some of the myths that might lead to a crisis that would call for unwarranted congressional action.

In prior testimony before this committee, I have said that it is only Congress that can fix the problem of State sales tax collection. I was wrong, because I had no expectation that the court would ever weight in on this again, but it has. And in so doing, it has eliminated the problem which animated prior congressional proposals and hearings about how to restore to States the authority to require collection by remote sellers on sales taxes.

Since the decision, the States have acted, and I expect them to continue to act, responsibly and deliberately in providing notices and guidance to taxpayers. No State has yet attempted to impose taxes retroactively. As the Chairman indicated in his opening remarks, the only State that has even indicated that they would do so, Hawaii, has since rescinded that recommendation.

Of course, Congress does retain full authority to legislate with regard to the appropriate extent of State tax jurisdiction. But even a prohibition or moratorium, as Mr. Moylan just called for, or a ban on retroactive taxation, would be devilishly complicated.

A so-called moratorium would affect all States and it would do so in different ways. The Congress would need to define terms that the court never defined because it was not making law, it was simply interpreting the dormant Commerce Clause. In writing those definitions and in defining a statute, the commerce would be creating a new law. There is no way, as Mr. Moylan said, to put the genie back in the bottle and, to go status-quo, anti-Wayfair cannot be neatly and precisely done.

Even a simple prohibition on retroactive taxation would be fraught with complications. There are several other risks, I think, that militate against immediate congressional action. The first and most obvious is it will interfere with State revenue collections. The second, and it has been discussed here today, it would interfere

with existing State activities to reduce taxes with the additional revenues from legally due and owed taxes. A whole number of States, even the District of Columbia, have already announced that they will be looking at legislation to reduce taxes. Here in D.C., they are talking about reducing the commercial property tax rate.

Senator Bramble already indicated that Utah has acted to reduce manufacturing sales taxes by using this revenue, and Wisconsin Governor Walker has already issued not just a statement, but guidance saying exactly what the reduction in personal income tax rates are going to be as a result of the additional collections.

Importantly, if Congress were to intervene now, it would not only jeopardize all of these tax cuts, but it could also interfere with the economy. I am going to quote here, because the Supreme Court said something very important in agreeing with South Dakota, that the physical presence standard “creates rather than resolves market distortions, and also produces an incentive to avoid physical presence in multiple States, affecting development that might be efficient or desirable.”

Overstock.com, one of the plaintiffs in the case, said almost something the same immediately afterwards, that it “would begin expanding its physical and digital operations, including supply chain, marketing, and recruiting into States in which tax nexus concerns previously prevented the company from having a direct presence.”

So, in other words, the physical presence standard itself interfered with the free flow of commerce among the States by preventing businesses which would otherwise make economically sound decisions from doing so because of a potential loss of a tax advantage.

I will conclude by highlighting the fact that the history of congressional action on State tax matters demonstrates that temporary solutions are rarely temporary, and they are rarely full solutions.

Somewhere in this building is a report that was produced in 1965 after 7 years of hearings on the appropriate extent of State tax jurisdiction, covering not just income taxes but also sales taxes. That was in response to Public Law 86-272, which was enacted in 1959. It was intended that that would be a temporary bill. The Senate report at the time says it was temporary, waiting for the conclusion of the Willis Committee to do its work and then come back and adopt a more appropriate long-term legislation; that never happened. That law from 1959 remains on the books today, unaltered except for a 1961 amendment to expand it to address the issue of sales taxes.

More recently, as Mr. Norquist mentioned, we had the advisory commission on electronic commerce. That was in response to a temporary prohibition on certain internet taxes. That commission was unable to produce any formal findings or recommendations in the area of taxation because it could not read a statutory requirement of a two-thirds majority vote.

And so, its report still sits there, again, with the permanent moratorium now being on the books. Mr. Chairman, thank you very much, and I look forward to questions.

Chairman GOODLATTE. Thank you, Mr. Crosby. Mr. Pincus, welcome.

STATEMENT OF ANDREW PINCUS

Mr. PINCUS. Thank you, Mr. Chairman and Ranking Member Nadler, members of the committee, for the opportunity to appear before you today. I would like to make three points focused on Wayfair's impact on small businesses.

First, we do not yet know the standard for determining when it is constitutional for a State to impose tax obligations on an out-of-State small business. Second, States are nonetheless moving ahead to subject these entrepreneurs, who are the engines of our economy, to unfair and costly requirements. And third, small businesses have no way to protect themselves again unconstitutional obligations.

On the first point, the Supreme Court in Wayfair made clear that there are constitutional protections for small businesses, but it did not decide what they are. It could not, because the three plaintiffs in Wayfair were all very large companies. The amount of business that a company does with customers in the State is a relevant factor, but how much business is required? We do not know. The court did not hold that South Dakota's \$100,000 annual revenue, 200 transactions test was sufficient, even for South Dakota. And if that level of connection were sufficient for South Dakota, one of our least populous States, then a much larger amount plainly must be required to permit New York or California or Texas to require tax collection.

And even if the level of business factor is satisfied, the Supreme Court indicated in Wayfair that a tax collection obligation still can be unconstitutional based on the burden on a small business of complying with multiple States' different rules. In other words, a small business cannot be forced to comply with 20 different complex tax collection requirements, each with an accompanying audit risk, even if it does some amount of business with customers in each of those States.

And finally, Wayfair did not address a separate constitutional protection for small businesses, the Due Process Clause, that requires a more substantial and direct connection between an out-of-State business and a State imposing a regulatory obligation such as a tax. The small business has to "purposefully avail,"—that is the language the courts used in its precedence, itself of the benefits of the State's market and laws. Sales to customers in the State are not, by themselves, sufficient. So, we do not know what the constitutional rule is.

But nonetheless, as you have heard, States are moving ahead to impose tax collection requirements, including on small business, and there is no reason to believe that States will appropriately protect these out-of-State businesses, who have no ability to hold politically accountable the officials who are making these decisions. The "Trust us" argument does not hold up as a matter of political reality.

Just look at the NCSL statement that was issued right after Wayfair that urged States to wait until January 1, not to impose retroactive taxation, to all abide by the streamlined tax rules. It is

not clear at all that every State is going to do that. Some States have announced that they want to start collecting taxes before January 1, for example. And some States, I should say, have statutes with thresholds lower than that in the South Dakota statutes, and there is no indication that they are backing away from those thresholds.

Third, and I think, most importantly, small businesses have no way to protect themselves against unconstitutional State requirements. Their choice is either to comply with a costly sales tax collection obligation that could well be unconstitutional even though their business will be hurt, and hope for relief years later, or decide not to comply and suffer draconian financial penalties if the obligations are later upheld by a court.

In virtually every legal context other than taxation, individuals and businesses subject to a State or Federal law that could be unconstitutional can go to court and seek a judicial determination regarding their constitutional claim before they are obligated to comply with the law.

But constitutional challenges to tax laws almost always cannot be asserted until after the victim of the unconstitutional obligation has shouldered the burden of collecting and paying the tax and seeks a refund. That is true in a Federal court because of a law called the Tax Injunction Act that bars any kind of injunctive or preliminary relief in Federal court, and most States have a similar requirement. That is why small businesses face this terribly unfair Hobson's choice.

So, protecting small business and, respectfully to Mr. Crosby, I think there are ways to protect small business. Our laws have definitions of "small business," Federal law does. It is not too hard to figure out who they are and to grant them the protection they need.

And I think it is critically important because all the data indicates that small businesses on the internet have not only been an engine of growth, the internet has been a mechanism for women entrepreneurs, minority entrepreneurs, and veterans who otherwise have a hard time starting businesses, to get a leg up through access to this national market. It would be terrible to take that away from them. Thank you.

Chairman GOODLATTE. Thank you, Mr. Pincus. I now ask for unanimous consent to enter into the record the following items detailing substantial compliance burdens as described by actual sellers experiencing them, highlighting the ripple effects of removing the physical presence standard in areas outside the sales tax, and calling for congressional action to address these issues because of the effects on business growth and innovation.

First, a statement by Jonathan E. Johnson III, on behalf of Overstock.com. Second, a statement by Timothy B. Matthews, CEO of Jewelry Television. Third, a statement from Engine, which represents some of the most innovative and fast-growing companies in the country. Fourth, a letter from 16,000 Etsy sellers. Fifth, a statement of Hamilton Davison, president and executive director of the American Catalog Mailers Association. Sixth, the testimony of Terri S. Alpert, founder and CEO of Stony Creek Brands. Seventh, the testimony of William M. Garbose, president and CEO of Har-

riet Carter, Fresh Finds, and Wise and Well. Eighth, a statement of Steve DelBianco, president of NetChoice. Ninth, statement of Douglas L. Lindholm, president and executive director of the Council on State Taxation. Tenth, a statement of the Honorable Jimmy Hayes, former Congressman and former commissioner of financial institutions for the State of Louisiana. Eleventh, the testimony of Edward Burnert, who is chair of the State and local tax committee of the American Bar Association's tax section. Twelfth, the testimony of Jessica P. Melugin, associate director of the Center for Technology and Innovation and the Competitive Enterprise Institute. And thirteenth, the testimony of Mr. Joseph Bishop-Henchman, executive vice president of the Tax Foundation.

Chairman GOODLATTE. We will now proceed under the 5-minute rule with questions, and I will begin by recognizing myself. And I have a number of questions, so I would ask the witnesses to keep their answers brief, so we can get through as many of them as possible.

First, to you, Mr. Norquist. Is there a real danger of retroactive tax liability for online sellers? Can you provide examples of States imposing retroactive tax liability either in the wake of the Wayfair decision or otherwise in the past?

Mr. NORQUIST. Yes, even before Wayfair, Washington State did, back in 2015. Michigan did in 2016. These are States looking back as much as 23 years. Yes, it has been done, and there is no reason to believe that it would not be done.

Chairman GOODLATTE. Mr. Cleland, does the bright-line physical presence rule protect or undermine States' rights?

Mr. CLELAND. Well, I guess I would say, pretty obviously, it protects, in that the rule is clear and other States cannot, under a bright-line rule, under physical presence that we have had to date, the Commerce Clause, States are not allowed to get into the business of businesses in other States.

Chairman GOODLATTE. Thank you. Mr. Moylan, conservative groups have long been hesitant to embrace most proposals in Congress to address the remote sales tax issue. What, in your belief, is the thinking now in that community?

Mr. MOYLAN. Well, it is hard to know exactly. My hope is that you have consumer groups and policy organizations recognizing that there is a significant amount of turmoil that exists post-Wayfair. The answer has always been vested here in Congress, that Congress needs to act to place some reasonable structures that folks can abide by. And so, while the landscape has certainly changed in terms of the political dynamics, ultimately, the policy resolution comes from the same place, and that is Congress.

Chairman GOODLATTE. And Mr. Pincus, what are the ripple effects of removing the physical presence standard in areas outside of sales tax collection, and what sort of businesses should be worried about those effects?

Mr. PINCUS. I think there is a broad range, Mr. Chairman. For example, accountants, lawyers, doctors, architects, others who provide services over the internet. Online education and training services, sellers of digital products such as apps, online software services that are not downloaded, but that are online services.

Then, there are questions, as have been raised earlier, about apportionment of corporate income taxes. I give an example in my written testimony, but there is a risk that is a result of this, as the Wells Fargo disclosure indicates, significant increases in duplicative corporate income taxes.

Chairman GOODLATTE. In light of the substantial compliance issues facing sellers and the lack of consensus from States on important details, some have called for a moratorium on the imposition of sales tax duties on remote sellers. Is a moratorium warranted, and is there way to implement it that would be helpful and fair to all interested parties?

Mr. PINCUS. I think a moratorium is critical, because history shows that without some kind of control, States go off the rails. Just to back up and give one example, Mr. Chairman, years ago, there was a multistate tax compact to deal with apportionment of State income taxes. The idea was to promote uniformity because there was a threat of congressional action. As soon as Congress did not act, the number of States joining dropped away and the uniformity dropped away. So, some kind of oversight and control is critical.

I think a moratorium is one way to do it. Another way to do it is to create a vehicle so that if a State moves to impose a tax, there is an opportunity for those who are burdened to go to court and challenge it before it takes effect. As I said, a critical problem in this area is that for business, especially small business, there is no way to get their institutional claim adjudicated, and so there really is no practical limit on the States.

Chairman GOODLATTE. The Supreme Court really did not give much guidance or practical approach to this, did they?

Mr. PINCUS. I am sorry?

Chairman GOODLATTE. I said the Supreme Court did not really give much guidance or a practical approach to—

Mr. PINCUS. No. The Supreme Court decided one thing: Physical presence is not required. It then left open five other questions about when a State tax obligation is constitutional and when it is not.

Chairman GOODLATTE. I want to ask a question of Mr. Sinewitz. Overstock told the committee that it received an estimate of \$250,000 for compliance software that wound up costing \$1.3 million. Jewelry TV told the committee it received an estimate of \$2 million for enterprise software implementation; the project wound up costing \$10 million, did not work, and ended up in litigation. Is your confidence that you can get software for a modest fee based on actual installed cost or contract estimates in the contract?

Mr. SINEWITZ. I am dealing right now with three different companies, and the average price of what I have been given with the implementation is around \$30,000, and after that first year, \$20,000, because the implementation is a one-time charge. The fees that they want to charge are based on the fact—

Chairman GOODLATTE. So, the answer is it is not done. You have been given promises, but you have not gotten experience—

Mr. SINEWITZ. I have got statements of work on my desk. We are just deciding which company we are going to go with.

Chairman GOODLATTE. Very good. Senator Bramble, the NCSL recently issued guidance stating that the States should consider waiting until January 1, 2019, to begin sales tax collection requirements on remote sellers. Why is that waiting period advisable?

Mr. BRAMBLE. Thank you for the question. I think it gives sellers a reasonable period of time to ramp up their IT departments and such. But I will tell you, as a CPA in our State, the chairman of our State tax commission, who is a tax attorney with some 40 years in the profession, suggested very strongly that Utah adopt an October 1st deadline. The legislature did not agree, because we wanted to give a little more time to give businesses time to prepare.

Chairman GOODLATTE. Other than Utah, how many States of the 22 States with remote seller laws on the books are explicitly following the NCSL recommendation of a January 1, 2019, start time?

Mr. BRAMBLE. I do not know the answer to that today.

Chairman GOODLATTE. All right. In 2015, the State of Utah filed an amicus brief challenging a California law that applied California's cage size requirements to laying hens outside the State. Utah's brief argued horizontal federalism; in particular, Utah's brief stated that each State should not expect that their internal policies are dictated by another State where the first State's citizens have no democratic representation.

The brief noted that California regulators have already inspected egg producers for compliance outside of California. Do you believe that California regulators should be able to tell Utah farmers how to run their farms?

Mr. BRAMBLE. I think that is a false equivalency, Mr. Chair. I think that the issue of sales tax deals specifically with a tax imposed on a purchaser within the State of Utah, and if a business wants to take advantage of that marketplace they comply with those laws.

Chairman GOODLATTE. You are not collecting that tax from the consumer; you are regulating an out-of-State business to require the collection of the tax.

Mr. BRAMBLE. The issue of taxation without representation; who is it that is voting for that tax, and who has that tax imposed upon? That is imposed on the purchaser.

Chairman GOODLATTE. Who pays for the audit? Who pays for the fact that each jurisdiction has a different regulatory scheme on how to collect and how to remit?

Mr. BRAMBLE. We have that issue across the economy. Remote workforce is a good example. Utah chooses to not require withholding taxes and does not tax income earned in the State of Utah until an individual has been in the State 60 days. New York taxes the day you arrive.

Chairman GOODLATTE. So, I take it, then, that you would agree with me that California regulators should not be able to inspect Utah farms for compliance with California cage size requirements?

Mr. BRAMBLE. While I agree with that, I do not believe that applies to the Wayfair case or the Quill case, and I believe it is a false equivalency.

Chairman GOODLATTE. Thank you. My time is expired. The chair recognizes the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman. Gentlemen, we have before us a rare situation where the Supreme Court has reversed its own earlier decision. And looking at this esteemed but exclusive panel of white males before us today—eight—I am struck with the proposition that the U.S. Supreme Court can one day overturn *Brown v. Board of Education*, just as *Brown v. Board of Education* overturned the *Plessy v. Ferguson* separate but equal concept.

As I ponder the judicial nominees of President Trump, many of whom refuse to say that *Brown v. Board of Education* was correctly decided, it gives me pause, and it should give all of our American people pause to think about what can happen with a U.S. Supreme Court that is improperly stacked with right-wing, bigoted justices.

Our society has undergone a drastic transformation in the 26 years since the court decided *Quill*. We are now all participants in a connected world that enables us to, among other things, buy products from across the country with the click of a button.

According to the Census Bureau, in the first quarter of 2018, 9.5 percent of all retail sales occurred on the internet, and in the wake of *Wayfair* there have been many calls for action by both States and Congress. We are here to assess those demands and determine how States and businesses will implement the *Wayfair* decision.

Mr. Norquist, you have risen to fame based on being an anti-tax crusader, is that not correct?

Mr. NORQUIST. I certainly support lower taxes on the American people, yes.

Mr. JOHNSON of Georgia. And you are the founder of Americans for Tax Reform, and you are the author of the Taxpayer Protection Pledge, is that not correct?

Mr. NORQUIST. Correct.

Mr. JOHNSON of Georgia. And is it true that 95 percent of all Republican Members of Congress have signed onto your pledge?

Mr. NORQUIST. Roughly that number have made a commitment to the people. If you read it, it is a commitment to the American people that they will vote against tax increases, yes.

Mr. JOHNSON of Georgia. Certainly. And it is your opinion that the *Wayfair* decision violates the spirit of the Taxpayer Protection Pledge, is that not correct?

Mr. NORQUIST. Well, yeah, but I could not get any Supreme Court justices to sign the pledge.

Mr. JOHNSON of Georgia. You might be more fortunate in the future if President Trump has his way. Mr. Cleland—and, by the way, Mr. Norquist, you are a member of Mr. Cleland's organization ALEC, is that not correct?

Mr. NORQUIST. Am I? OK, yes. I thought you had to be a State legislator. I am a supporter; I think ALEC does great work, if that is the question.

Mr. JOHNSON of Georgia. Well, certainly. And, Mr. Cleland, any organization that seeks to make a difference in this world and be effective has to be properly funded and resourced. Is that not correct?

Mr. CLELAND. I would suspect, although I suspect there also are many people who have very little funding and make a huge difference in this world.

Mr. JOHNSON of Georgia. Well, ALEC is very well funded.

Mr. CLELAND. From your lips to God's ears, sir.

Mr. JOHNSON of Georgia. And most of ALEC's money comes from corporate memberships, is that not correct?

Mr. CLELAND. I honestly could not tell you the exact breakdown. We are funded like most nonprofit nonpartisan organizations: Individuals, State legislators, corporations, and foundations.

Mr. JOHNSON of Georgia. But most of your money comes from corporations, is that not correct?

Mr. CLELAND. I cannot say that I know that to be a fact. I do not know the answer for you.

Mr. JOHNSON of Georgia. Is ALEC a tool of the corporations that fund it?

Mr. CLELAND. The really cool thing about ALEC, and about a lot of organizations which I have worked, we put our bias right on the website, and it is in fact the exact way I did my testimony. We are a tool of our legislator members, including Mr. Bramble, who all believe in limited government, lesser taxes, and federalism.

Mr. JOHNSON of Georgia. And you went through those three themes earlier.

Mr. CLELAND. Absolutely. Yes, sir.

Mr. JOHNSON of Georgia. And I definitely understand what ALEC is about. ALEC actually is supporting the online retailers versus the mom-and-pop brick-and-mortars who are disadvantaged by their requirement to collect sales taxes. Is that not correct?

Mr. CLELAND. Oh, no, no, no. Not at all. If you heard the testimony and in my comments that I have submitted written, that is not at all our position. Our position is to have simplified systems, so everyone can understand it. I believe everyone should know when they are going to be taxed and what taxes are owed; I believe merchant should be equally as clear in that.

I am crazy old-school; I believe in no taxation without representation. I believe that the free market should be allowed to operate without hindrance of that confusion, and finally, I do believe that the State legislators should be empowered in most situations except in interstate commerce, as the Commerce Clause calls for, which is the jurisdiction of this Congress.

Mr. JOHNSON of Georgia. Well, I thank the gentleman, and I thank you all for your appearance here today. And with that, I will yield back.

Chairman GOODLATTE. The chair thanks gentlemen and recognizes the gentleman from Ohio, Mr. Chabot, for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I want to commend you on putting together really, I think, very different and good points of view on an issue that we have been struggling with for quite some time here. I think all of them, whatever side you are on, have really done a very good job in their statements and responses to the questions.

I would also maybe advise my colleagues on the other side not to throw the term "tool" around here too much about funding when

one considers how much the trial lawyers and the labor unions and radical left-wing environmental groups throw around this place.

But that being said, I would like to start out by submitting for the record a recent Forbes article titled "Let's Be Blunt: Internet Sales Taxes, or Our Economy-Sapping Domestic Tariffs," which I think highlights some of the difficulty in resolving this complex issue.

In it, the author raises some important considerations that we, as Members of Congress and also various State legislators, should take into consideration as we work through this issue.

So, Mr. Chairman, I would ask that that be entered in the record. Mr. Chairman, could we get that entered in the record?

Chairman GOODLATTE. Yes, without objection, that will be made a part of the record.

Mr. CHABOT. Thank you very much. Mr. White, in addition to serving as a senior member of this committee, I also happen to be the chairman of the House Small Business Committee, and in fact, just last week we had a roundtable with various small businesses from across the country who use various electronic marketplaces to sell their products.

My first question to those folks at the table was, "How is the Wayfair decision going to affect you, and what do you think Congress ought to do about it?" and that sort of thing. So, I will ask you simply, as I asked many of them, how will the Wayfair decision affect your business as far as you can see it at this point?

Mr. WHITE. Well, there is no doubt that I am going to incur more costs in having to hire more employees. Possibly, I may even have to lay off other employees to make room for bookkeepers and accountants to try to collect and remit this tax.

Mr. CHABOT. How much time and resources do you currently spend, would you estimate, complying with State tax laws now?

Mr. WHITE. Right now, I have a part-time bookkeeper that probably spends 3 to 4 hours a week, maybe less, in complying with remitting taxes.

Mr. CHABOT. And how might that change if you had to begin collecting in multiple tax entities? It has been estimated 10,000; I do not know what the true number is, but—

Mr. WHITE. Yes. I mean, I have heard numbers as high as 12,000 tax jurisdictions. This would completely change the complexity of my business, and we would no longer be an auto parts supplier, but we would become a tax collector.

Mr. CHABOT. Senator Bramble, let me turn to you. The South Dakota law, as the laws in other States—including your State, Utah—includes a minimum sales threshold. However, it seems unclear whether the collection obligation arises only on transactions completed after the threshold is met. It is also unclear whether that threshold, once met, creates a continued obligation to collect and remit taxes or if the threshold requirement rises annually.

It seems to me that if Congress does not act, these and other complex questions raised by the patchwork of State sales tax systems will likely be answered only through wasteful guesswork or long, expensive litigation. Would it be better if we relieved the burdens on small businesses by requiring States to simplify internet

sales tax structures within their State that small businesses could more easily comply? What would your thinking be on that?

Mr. BRAMBLE. Well, let me set the record straight as it relates to Utah law since I was the sponsor of the Utah statute. In Utah, once a seller reaches the threshold of 200 transactions or \$100,000, then it becomes effective for the next quarter. There is no retroactive provisions under our statutory framework, nor will there be.

Now, if you had asked me this question a year ago, pre-Wayfair, I would have agreed that Congress should act. As a matter of fact, as a CPA, long before I was elected to the Senate 18 years ago, before I was elected to the Senate as a CPA I came to Congress on behalf of the AICPA, the American Institute of Certified Public Accountants, seeking a solution to the challenges of Quill.

Because you cite the small businesses that may incur some additional cost for compliance, ignoring completely the thousands and thousands of small businesses that are going out of business because they cannot compete because of the differential on tax policy, where government is choosing winners and losers. And it is that inaction of Congress that caused NCSL, the National Governors Association, and others—in January 2016 we announced a changed strategy, and we came to this committee, this leadership, and we said we would prefer Congress to act.

You have the remote transaction parity; the Senate had passed the Marketplace Fairness or Mainstreet Fairness—MFA—Act. We were begging this committee to take action, and this committee refused. States were given no other choice but to seek judicial redress for an unlevel playing field to protect those thousands and thousands of small businesses and those employees in the small businesses.

So, pre-Wayfair, I would have agreed with you, and I was one of many State legislators and organizations petitioning Congress to act, but Congress did what it did best, which was nothing, and now, post-Wayfair, I believe it will be up to those 50 laboratories of democracy to determine what is best for their States, recognizing that Wayfair, as we have heard testimony, addressed one piece of the Dormant Commerce Clause.

It dealt with whether physical presence should be criteria in establishing an undue burden. The rest has been left; it has been remanded back to the lower court for further action. But in the meantime, States are obligated to act, because those general fund revenues, whether States want to do it like Utah, where we are broadening our base and we are lowering our rate both in sales tax and income tax, we will make this revenue-neutral as we see what those revenues coming in are. But that should be up to the States.

As a State legislator, a president pro tem of the Utah Senate, and past president of NCSL, many Members of your body have served in State legislatures. It is a real challenge at the State level when we hear Members of Congress saying, “Well, we know better for the States than the States know for themselves.” That is a very real challenge for us, sir.

Mr. CHABOT. Thank you.

Chairman GOODLATTE. Would the gentleman yield?

Mr. CHABOT. I would be happy to yield.

Chairman GOODLATTE. I thank the gentleman for yielding, and without objection, the gentleman will receive an additional minute. I just want to say to the gentleman that there are a couple things that need to be added to that record.

First of all, this committee for 15 years or more encouraged the States to do a uniform State law on this issue, and the States time and time and time and time again failed to accomplish that. Not so much the fault of the State of Utah, but actually some of the largest States in the country, and with no ideological consistency, insisted that they had to do it their way. So, that is number one.

Number two, this committee put forth a multitude of alternative proposals that would have solved not only the problem that Senator Bramble talked about but also the question I asked him about the California egg case. This issue regarding the reach of States into other jurisdictions to regulate is one that is going to grow and persist and be a serious problem in a Nation that is built upon the concept of federalism. So, I appreciate the views of the senator, but I think that it needs to be supplemented. I thank the gentleman.

Mr. CHABOT. Reclaiming my time, if I could just make one final point, the senator mention "failed to act" a number of times, and I think Congress deserves a lot of criticism it gets on a whole range of things, but the term "failed to act"—oftentimes that means we did not pass a law, and when we pass laws, that means more regulations, which the public also complains about, for good reason. New laws mean more regulations, more government, et cetera. So, "fails to act" is not always a bad thing.

Mr. BRAMBLE. I agree.

Mr. CHABOT. Thank you.

Chairman GOODLATTE. The gentlewoman from California is recognized.

Ms. LOFGREN. Thank you, Mr. Chairman, and thank you for this hearing, which I think is an important one. You know, when I heard the news that the Supreme Court had made a decision, although, you know, we have had various viewpoints on this, I think many Members felt, "Oh, gosh, now that is off our plate," because this has not been a fun issue to deal with, except when you read the opinion you realize, actually, that is not the case. All they decided is the substantial nexus issue, and we still have a lot of issues that need to be sorted through.

I was in local government, not State legislature, for a very long time, so I am very sympathetic to local control, but we also have an interstate commerce issue here. And as the court mentioned, there is concern about small business, and my concern as a Representative in the House, but also as a local government official, was the small businesses that are brick-and-mortar, but also the small businesses that are online, and both of them need some attention to make sure that they do not get squashed.

And so, one of the things I hope that we can address as we go forward is how to make sure that those small businesses can continue to flourish, because small businesses are the engine of our American economy. I would just observe that the big money for States is really in the big actors online, and so, to some extent, this decision has actually solved that in terms of the major money coming in. But you know, the person who is selling crafts out of their

living room is going to have real trouble complying with some of this.

Mr. Pincus, I know that you wrote one of the amicus briefs on this. In terms of small business exemptions to online sales tax collections, there is a lot of laws being discussed. One that I know of that was introduced in this Congress would have granted an exemption to businesses with revenue below a certain threshold unless it made those sales through an electronic marketplace.

However, one of the questions I had about this if the revenue qualifies for an exemption, but then I make a sale from my website, I am no longer protected, as I understand that, and now I would have to collect sales tax, along with all the complications and potential audits that that could imply. Is that your understanding, and does that really solve the problem?

Mr. PINCUS. Congresswoman, I think there is a big problem in trying to slice up the responsibilities between electronic marketplaces and sellers, because the fact is most every seller today is using multiple channels—

Ms. LOFGREN. Multiple, yeah.

Mr. PINCUS [continuing]. To reach consumers. They may be on one or more websites. They could be on eBay, Etsy, others. They probably have their own website, and they may have other more local websites as well that they sell through. So, the problem with shifting the responsibility or triggering sales tax collection based on a marketplace is that that just really does not work in a multi-channel world.

Ms. LOFGREN. One of the things that I have been concerned about is not only existing small businesses but maybe incoming, for lack of a better word, fledgling businesses that have not even launched and how they might be affected by the electronic marketplace issue. For example, you have got crowdfunding businesses that are raising money through Kickstarter or Indiegogo that I think probably fits the electronic marketplace definition, maybe not.

How could we deal with the exemption with a business that does not even have a product yet that we might expect to comply with tax requirements of 45 States? And further, at that point, we have no idea what the revenue is going to be. Let's say it is \$100,000 in South Dakota. You do not know, so you are going to have to collect all that information anyhow. Is that right?

Mr. PINCUS. I think that is one of the problems, both with the level of the threshold and when it kicks in. You know, Senator Bramble indicated Utah seems to have a good structure in terms of not imposing the responsibilities until the threshold is met. We could discuss whether that threshold makes sense or not separately.

But other States may not be doing the same thing, and it still requires the seller to keep track of all of this information and be ready to go into a mode of collecting taxes as soon as the threshold is reached, which is one of the reasons why I think the Supreme Court focused partially on the level of sales into a State but also on the total burden on a small business.

Ms. LOFGREN. Right.

Mr. PINCUS. And I think those are two critical questions that the Constitution requires to be addressed that States are not addressing in this, you know, “We are just all going adopt a threshold level of business” rule.

Ms. LOFGREN. Well, if I may, this is as complicated as it ever was, and with tremendous respect for each of the 50 States grappling with this, it is really a multistate issue that needs to be resolved, the same problem that we have been grappling with here; not only we in the Congress but that the States have been trying to address and failing successfully to do.

I guess, now that this is before us—I mean, the court has decided, and we have got a remand—this could light a fire under not only the Congress but all of the States who have an interest to try and sort through this complicated issue for the benefit of small businesses, both brick-and-mortar and online. I think the chairman for allowing me to go a bit over.

Chairman GOODLATTE. The chair thanks the gentleman and recognizes the gentleman from Louisiana, Mr. Johnson, for 5 minutes.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chairman. Thank you for holding this hearing and all of you for your time and your expertise. It does mean a lot to us. Many of your old hats at this game, but do not—this is a sparsely attended hearing, but the record is going to matter a lot to us.

There is a lot going on; it is our last week before August recess, so everybody is scattered all over the Hill. Their lack of presence here does not mean they are not interested. We are all keenly interested in this, and your statements and the transcript of this testimony is going to help us a lot, so thank you for that.

I came out of the State legislature in Louisiana, and I am ashamed to say that our State, while I tried to fix it when I was there for 2 years, probably ranked lowest on these lists, where we probably have the worst—I think we have the highest sales taxes in the Nation, or we might be a close second now. It is a big problem. Retailers are very concerned about all this, and I appreciate all your testimony. Let me go through as many questions as I can.

Mr. Norquist, I appreciate all your work. The question I have is, could foreign governments use the Supreme Court’s removal of the physical presence standard as a justification to impose on U.S. companies tax burdens based on economic nexus, like the digital services tax?

Mr. NORQUIST. They are already doing it. They are already talking about that. The Europeans are all excited about this, and they think we opened the door, and our courts cannot even protect ourselves. California went after a guy named Hyatt who invented something in Nevada, but they think maybe he thought of it when he lived in California. So, they sent people over to harass him, and cops and all sorts of illegal things.

It went to the Supreme Court; the Supreme Court said, “This is unconstitutional. This is illegal. You cannot send police from California and go after this guy here, and here is this huge fine for having done it.” Nothing; California just sits there and laughs at them. “Oh, the law would be very reasonable.” Oh, yeah? Not when there is enough money on the table they will not be. And they just sit there.

They went after the guy; they harassed him, and the Supreme Court said, "You cannot do that," and they said, "We do not care, and we do not pay our bills, and we do not care what this fine was that you say we are supposed to pay." And Europeans will have even more contempt for the American court process than does the State of California.

Mr. JOHNSON of Louisiana. It is ironic since taxation without representation, as has been pointed out today, was one of the animating principles that started the American Revolution.

Mr. NORQUIST. It is habit-forming. Politicians love it.

Mr. JOHNSON of Louisiana. Yes. One of the ideas we have been talking about is the Business Activity Tax Simplification Act, BATSA, which would prevent State overreach in the area of business income taxes. Is there a greater need now, obviously, for bills like that in the wake of Wayfair?

Mr. NORQUIST. Yes, because this has always been the target. When I have argued with a lobbyist who was theoretically working on the other side for the big retailers, they were actually working for the spending interests, and their position was, "We just want the money, and there is no money in the sales tax, nothing worth looking after. We are looking over the sales tax into corporate income taxes and personal income tax. Just fly across the State; land in our State; make a business deal maybe in our State." They wanted some VIC.

Mr. JOHNSON of Louisiana. One more. New Hampshire is working on legislation to shield its online sellers from onerous sales tax collection obligations imposed by other States. First, is that a good model, and second, what else do you think States can do to protect sellers from extreme compliance burdens? Is there a role for Congress in that part of it?

Mr. NORQUIST. I think each State should protect its own small businesses by insisting that any judicial questions on this be settled by their State court, not somebody else's State court. This went to the California State courts. They had no limitations on what they were willing to do to some guy in Nevada. Why would they care? They do not. And so, it is important that you have the judges here.

The other part of "no taxation without representation" is we objected to the Brits wanting to try our guys in Britain—they wanted to have trials in Britain, not here—when they had been abusive to Americans. In that case—where you say, "If you want to go after a small business in New Hampshire, you will go before a New Hampshire judge, not a California judge or a Chicago-Cook County judge; that is not happening"—that is a good start in making the case that States have the right to protect their citizens.

Mr. JOHNSON of Louisiana. That is good. Mr. Cleland, I really appreciate the limited government mission of your organization. You have written about how Wayfair will impact the spending habits of citizens. I am really interested in that. You have said that instead of States expecting inevitable increased revenues, they should be wary of increased taxes, meaning citizens have less to spend, obviously. But as you all have pointed out, many of the States have not understood this reality.

The question I have is how many States have taken the approach so far of reducing their taxes to try to attract new businesses to reside there to create new jobs and all the rest? And if so, do you think you have any data that demonstrates the result of those decisions? In other words, can we show with empirical evidence that that is the right approach?

Mr. CLELAND. My direct answer to your question is I do not have that with me, and I will check with our tax folks back home back at the office to see if they do. What I will tell you experientially is, yes, every State, every locality—you cannot open a newspaper—including here in this area—Virginia is trying to lure Amazon, Maryland is trying to lure Apple, and vice versa. People are trying to have the Redskins move the stadium somewhere else; we are trying to figure out a place to put a soccer team; and they all propose reducing taxes in one way or another.

It highlights the notion that taxes really are a local issue. It is not out there; it is not virtual. And by the way, Louisiana? Fair to middling; 28th.

Mr. JOHNSON of Louisiana. We are a little better than I thought. We do have the highest sales tax, though. Thank you. I am out of time. Thank you. I yield back.

Chairman GOODLATTE. The chair recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, this is an important hearing; however, I simply just do not know where to start. I know there is an array of very important witnesses here, and certainly one of the strongest advocates against any form of taxation at all.

But I think it is important to put on the record that, as a member of the Budget Committee, having to suffer through a Republican budget that took \$2 trillion out of Medicare and Social Security on the basis of having to fund the \$2 trillion 1 percent benefit tax cut that was proposed and passed by this Republican majority, I think that is worthy in the midst of talking about internet sales tax, of which I have been an ally of the chairman; I have respected bricks and mortar. But we are at a point where we need to find solutions.

And before I engage in that discussion, let me also say, Mr. Chairman, I just came back from the border, and I want to affirm—I know my good friend Mr. Rutherford always makes the point that law enforcement do as they are asked to do and work under the rules and guidelines and laws and nonpolicy—since the snatching of children from their parents had no evidence in best practices, nor did it have any evidence in law—wrong-headed, meanspirited policy. I went throughout the various detention centers and the place that was cited for reunification and went to the border.

And all of these hardworking Americans of which I have worked with, because I am a member of the Homeland Security Committee—and my colleague was there and will speak eloquently, and she continues to advocate in this issue; I thank her for her leadership, Congresswoman Jayapal—but all of them are working, but they were working on the deck that they were handed. Whether it was jails or silver blankets, this is what deck they were given.

They were given the deck of not being able to have a grandmother who had raised a child from babyhood to be considered a parent.

And finally, on the reunification issue, we got a chance to see four—and they were hardworking individuals there, but they were without resources. They were baffled; they are not going to make the court deadline. And I insist that this committee, even in these waning days, holds a hearing and subjects itself and this Congress to a resolution of inquiry to deal with this catastrophe and this collapse.

And frankly, I believe that this is a disaster and a pox on our house of which these children and these individuals who present themselves at the border did not desire to have. So, I wanted that on the record, because I think this is extremely important.

Let me also indicate to Mr. White and Mr. Sinewitz we have had legislation where we do a \$1 million exemption. I mean, I think there is a reality to your situation that we need to address. I understand, Mr. Pincus, who I certainly support lawyers trying to clarify what we have not clarified; I do not know if you want to comment on that eBay has indicated that this would not affect them. And so, my question is going to go to you, but it is also going to go to Curt Bramble.

I am from Texas; it is a big State. It is so long ago that when we were discussing it, we were talking about, before Wayfair, we were talking about bricks and mortar and what kind of contacts the business had in the State. Now, we have gone beyond that with criteria.

So, I would just ask the two of you, Mr. Bramble, what kind of impact is on our States now, on the State of Texas as we stand? And then, Mr. Pincus, if you would just give us the purpose of your thinking on your lawsuit.

And I would simply join with Republicans and Democrats to try and resolve this in a way that addresses our small businesses throughout the Nation, our States that are dependent upon sales tax. And as I said, we are cutting so much out of the Federal Government it is a wonder we are going to be able to pay our light bills with this tax bill that we have not seen the impact from.

But I really want to be able to help out small businesses. So, Honorable—but I think you are past president, senator, representative, but we are delighted to have you here—I yield to you.

Mr. BRAMBLE. Thank you. I cannot speak for Texas, but I can speak for Utah and what the impact is in Utah. After the Wayfair decision was handed down, that did not change our tax structure at all, because in Utah, until we enacted legislation last week in a special session, we did not have a statutory framework to require mandatory collection and remittance of sales tax from out-of-State sellers. And that was inherent in our compliance with the Streamlined Sales Tax Project, or the streamlined Sales and Use tax agreement.

But the challenge to small businesses in Utah, and we have heard today about women and minority and other businesses—

Ms. JACKSON LEE. Right.

Mr. BRAMBLE [continuing]. Those are being challenged. The bricks and mortar, the people that are investing their life's earn-

ings in a business are being put out of business because they cannot compete fairly due to a fabricated disparity of tax policy.

We are seeing that in Texas; we are seeing that across the board. We hear about, "Well, a small business in Utah or small business in South Dakota might be different than a small business in Texas," because South Dakota has less than a million population, and Texas has however many—

Ms. JACKSON LEE. Not at all.

Mr. BRAMBLE [continuing]. Tens of millions. But to that small business it does not matter how big the State is; it matters that they are being competed against unfairly, and it is government choosing winners and losers through tax policy. And what myself—bipartisan advocacy is we want tax fairness; we want all businesses to play by the same set of rules, and if a small business plays by the same set of rules they can compete effectively. That is what is happening with the small businesses across the country.

Some 80 percent of all employees in this Nation work for small businesses. It is not the large businesses; it is the small businesses that really are the engine of our economy, and that is who we're elected to represent, in my opinion.

Chairman GOODLATTE. The time of the gentlewoman has expired. The chair recognized the gentleman from Florida, Mr. Rutherford.

Ms. JACKSON LEE. Mr. Pincus was going to do a sentence. I asked him to—over here, Mr. Pincus.

Chairman GOODLATTE. Very well. Briefly, Mr. Pincus.

Ms. JACKSON LEE. Thank you for your courtesies, Mr. Chairman.

Mr. PINCUS. Thank you, Mr. Chairman. Just a couple of points. I would urge you, Congresswoman, to look at the amicus briefs that eBay and 50 sellers filed, that Etsy and a number of filed, discussing the real-world burdens on those online, very, very, very small businesses from having to comply with multiple State tax regimes. I think in this level playing field argument it is important to realize that there are advantages and disadvantages to each.

A brick-and-mortar business has customers that walk in; they see the merchandise; they can buy it there. If it needs service they can get the merchandise there, and most important, there is no shipping charge. If an online business has a shipping charge, which is a real financial cost that the others do not.

The online business, if it is doing business in multiple States, always has the compliance cost for its State sales tax, as does the brick-and-mortar business, but the online business in this world is going to have, potentially, compliance costs associated with 30 or 40 different State tax regimes. That is a much higher compliance cost.

So, you cannot just say the entire difference here is that tax collection. It is not. Shipping; compliance costs; there are lots of different pluses and minuses on each, and I think the problem here is the critical question is when a State decides to impose a burden on an out-of-State seller, does that out-of-State seller have any real protection under the Constitution? Can it make the Constitution's protection real by going to court to say, "This burden is too much?"

Under the current regime, where the only way you can challenge those things is after you have collected the taxes, small businesses cannot do that. They need another way.

Ms. JACKSON LEE. Thank you very much.

Chairman GOODLATTE. The chair recognizes the gentleman from Florida, Mr. Rutherford, for 5 minutes.

Mr. RUTHERFORD. Thank you, Mr. Chairman, and I want to thank the panel for being here today. Mr. Norquist, I have spoken with you, at length, in the past about some taxation issues, and I know that the physical presence rule is kind of at the heart of no regulation without representation principle that you talk about.

But I would like to ask you and Mr. Bramble—and you already touched on it a little bit, I believe—and correct me if I am wrong about it, but I think from our previous discussions that, you know, one of the principles that you also profess is that government should not pick winners and losers among business through taxation policy. Is that a correct interpretation of your position?

Mr. NORQUIST. You would not want to use tax policy to punish one product or industry versus another or subsidize one product or business over another. Congress and State legislators would get the winter off if they quit doing that.

Mr. RUTHERFORD. Right. Going to the core of it, it seems to be a fairness issue, you know, to me anyway, and I presume to you as well. When I hear, you know, the conversation that Mr. Bramble just had with Ms. Lee, you know, there is concern about the launching of these new businesses and the impact that this would have on those who are trying to grow their business, yet we are not hearing a lot of talk about the existing brick-and-mortar businesses that are struggling to compete against this.

My question is, do you see this collection online as unfair, number one, and number two, do you see it as a new tax?

Mr. NORQUIST. If you have to change the law to get more money it is a new tax. You asked about fairness; I spoke with a Republican Governor who had legislators—I am sorry, the Retail Federation people came by and said, “This is terribly unfair to us, and he said, “Well, I will introduce a bill. How much money are we missing?” “Jillions, because you are not taxing interstate sells.”

Fine. We will take jillions, we will reduce the sales tax on everyone in our State, and we will tax all the other guys. So, complete equity. They walked out and never came back, because the issue was not fairness. The issue was behind them, where the city mayor was saying, “If you do not go get us more money we are going to raise your taxes through the property taxes,” and so they were put out in front to make the case.

But when they came back and said, “They offered us fairness,” he said, “You stupid idiot, fairness was not the goal. Money was the goal; fairness is the argument.”

Fairness: When people say, “Here is fairness,” you know how you get fairness? Always raise taxes; fairness. Any State can get more fairness between people outside the State, who they have no right to tax, and people that they do tax by reducing their sales taxes.

Lots of States have lower sales taxes than other taxes, lower income taxes than other taxes. Congressman Johnson from Louisiana asked about how this works. HowMoneyWalks.com is the website to go to, and it will show you the high tax States and how many people leave each year and how much income leaves each year, and the low tax States, how much money and people move to those.

So, it is not only good policy to have tax competition, but Europe wants to get us into, the U.S., into a tax cartel. They consider our 21 percent corporate rate to be unfair. They loved it when we were up at stupid 35, and they were 10 points under us and could outcompete us in the world. Now we are at 21, they want to yell foul and have tax harmonization. Fairness in the U.S. is what America calls tax harmonization; in Europe they call it fairness here. Always up, always up; never down.

Mr. RUTHERFORD. Right. But I do question whether the expansion of a collection of a tax that already exists—sales tax—that is standard across all States, I believe. It is an interpretation of the application that would change and create an expansion. How is it a new sales tax?

Mr. NORQUIST. Many States have Sales and Use taxes. You could always in your State collect the Sales and Use tax from one's citizens, but Governors and State legislators do not like to do that because it looks tacky to follow the UPS tax around and go beat people on the head and take their money. They would much rather have the beating on the head take place someplace else in another State with somebody else.

So, those taxes could be raised in State by any politician that wanted it to. They want somebody else. They want the Hessians to do it. They do not want to do it themselves.

Mr. RUTHERFORD. Thank you. Mr. Bramble, could you respond to that very quickly? I see my time is up.

Mr. BRAMBLE. Certainly. I appreciate the question. First of all, the tax compliance. Currently, every State that has a sales tax—Congressman, you touched on it—it is a burden on the purchaser, and currently, every individual citizen, millions of citizens are required today to track their individual purchases, accumulate those, and voluntarily report them with their income taxes. That is true across all States that have a sales tax. So, when we are talking about compliance burden, we could talk about the millions of individuals who would be required to comply today versus having a State comply.

Now, the idea of having a business collect tax, the wherewithal-to-pay doctrine, that is inherent in our tax system. We have employee withholding taxes. Why, rather than have an employee voluntarily pay their taxes when it comes due? Because government gets their money at the time of the paycheck. It is withheld at the time. Sales taxes are collected at the time of the purchase because of the wherewithal-to-pay. That is sound tax policy. Broadening the base/lowering the rate is sound tax policy.

And one final point I have got to make. A colleague in South Dakota has a little adage that he regularly repeats: If you bought it, a truck brought it. It does not matter whether you are an internet seller or whether you are a bricks-and-mortar store. As a CPA, I will tell you that a line item on virtually every income statement or statement of revenue and expenses is shipping, and shipping costs are inherent.

If you carry inventory in your business you have paid shipping to get it there, whether it is a bricks-and-mortar store that someone then comes and buys it across the counter, or UPS delivers it

to your doorstep, there are shipping costs that are assessed on virtually every delivery of every product.

Chairman GOODLATTE. The time of the gentleman has expired. The chair recognizes the gentlewoman from Washington, Ms. Jayapal, for 5 minutes.

Ms. JAYAPAL. Thank you, Mr. Chairman. Before I go to the topic at hand, I just wanted to say that I appreciated my colleague from Texas's remarks on our trip to the border, and I would ask, Mr. Chairman, that we do have an open hearing on the issue of family separation.

The Department of Justice is now, by the way, saying that 463 parents were deported already, which was a huge jump from 180 that we were told last week in a briefing were deported. It is a travesty. It is government-sanctioned violence, and I really hope that we have a full hearing in this committee.

Thank you all for your testimonies today. Remote sales tax collection has been an extremely important issue for my home State of Washington since our State has no income tax and therefore is extremely vulnerable. Nearly 52 percent of our general fund revenue comes from retail sales and Sales and Use tax, and so, as a result, the shift to online shopping has meant that we are no longer called collecting essential dollars that are needed for things like public education. And at the same time, our local brick-and-mortar businesses were telling us that they are ending up at a huge competitive disadvantage to out-of-State retailers.

The reality is that States had to address this, because we had no other option. We needed to address the very real changes in our economy and the shift to this online shopping and the technology that changed the economy, and that is why Washington State last year decided that it had to act.

We enacted a law that requires online sellers delivering products to our State to pay our sales tax. It is absolutely in line with what the Supreme Court just decided in Wayfair. And today Washington State expects to bring in \$432 million in its first year to pay for our very essential services.

I want to start by going to Mr. Norquist, because I am very confused by your statement that Washington State is one of the States that collects retroactively. Simply not true. But I wanted to give you a chance to defend that remark. Can you turn your microphone on?

Mr. NORQUIST. Dot Foods, Inc., the Department of Revenue, Washington, 2016. I can read the site. You were retroactively taxing interstate, not on the sales tax, on a different issue. The question was do States—

Ms. JAYAPAL. Exactly. Let me just say—

Mr. NORQUIST. Do States do retroactive taxation? Yes, they do.

Ms. JAYAPAL. OK, Mr. Norquist, you said in response to the chairman's question about retroactivity in this issue—you said Washington State. I want to correct the record and make it very clear that our sales—

Mr. NORQUIST. You can read my statement. It is not wrong.

Ms. JAYAPAL. Mr. Norquist, this is my time. Reclaiming my time, thank you very much. I want to State for the record that our Wash-

ington State law does not allow for retroactive collection on this issue, and I want to make it clear——

Mr. NORQUIST. On this issue.

Ms. JAYAPAL. I am not asking for your comment. Thank you very much.

Mr. NORQUIST. I did anyway. Free country.

Ms. JAYAPAL. I am reclaiming my time. Madam Chairwoman, please instruct the witnesses that they are not to answer a question unless they are asked. This is my time, and I would like to have an additional amount of time allocated to me. All right, moving on. Senator Bramble——

Mrs. HANDEL. Well, hang on a second. The chair did not rule yet. But, yes, the chair will graciously award additional time.

Ms. JAYAPAL. Thank you, Madam Chair. Mr. Bramble, several of the witnesses today have argued that Wayfair may create a patchwork of uneven rules across the country. I am just curious, particularly in your role both as a State senator and with NCSL, can you talk about your views on that on that issue and whether you think that Wayfair actually might help promote consistency?

Mr. BRAMBLE. Certainly. I think you will probably raise an eyebrow with my answer. Let me quote from ALEC's statement on tax policy: "Low competitive tax rates on a broad tax base offer a level playing field to all. In this environment, more residents will benefit from greater economic growth." That is coming from the American Legislative Exchange Council.

The issue is if you are going to take advantage of a State's economy, you should comply with the rules of the State's tax policy. And if a retailer wants to come into Washington or Utah they should comply with the same collection and remittance program that businesses inside the State have to comply with. It is that simple. This idea about a patchwork, this idea of 10,000 or 12,000 taxing jurisdictions; we have heard a couple of witnesses today talk about that.

As a CPA—you were not here for the testimony, but in the State of Utah there are well over 600 taxing jurisdictions, and yet every business that either has physical presence in the State and operates, or, beginning January 1st, under Wayfair, that will sell into the State remotely, will make one remittance to the State tax commission, and then those revenues will be distributed/allocated to the various political subdivisions.

That is true in virtually—well, not all States; I guess you could say Colorado with home rule. The vast majority of States—this idea about 10,000 or 12,000 taxing jurisdictions and 10- or 12,000 audits is pure fabrication. It does not exist in the real world.

Ms. JAYAPAL. Thank you, Mr. Bramble. You know, in our State we had such strong bipartisan support for our legislation, and we worked very closely with Republicans, who understood that we are trying to protect our brick-and-mortar businesses; we are trying to protect the broad tax base. Let me ask you another question.

What protections—I know some of the things we put into our law in Washington State, but what protections in general exist to ensure that State remote sales tax laws do not harm those small sellers, and what is the economic threshold for States to require re-

mote sellers to collect taxes on sales within the State in general, speaking from your experience?

Mr. BRAMBLE. Starting from the 60,000-foot-view, the Commerce Clause still exists. An undue burden still exists if a State poses an unreasonable burden on an out-of-State seller. What Wayfair decided was simply that physical presence was no longer a criterion for establishing an undue burden. States like Utah; we are establishing a small seller exception. We follow the South Dakota law.

Many of the States that are part of the Streamlined Sales Tax Project have protections for audits, for compliance, standardized definitions of the types of transactions, et cetera. And I believe that, post-Wayfair, States will be looking for ways to streamline, to simplify, and to make ease of compliance, because right now compliance with our sales tax laws—Washington and Utah are no different except you do not have a State income tax.

Ms. JAYAPAL. Right.

Mr. BRAMBLE. In Utah—

Mrs. HANDEL. You are now approaching 2 minutes on this. I will let you wrap up the sentence but not in a filibuster-y kind of a way.

Mr. BRAMBLE. Sorry.

Mrs. HANDEL. Thank you.

Mr. BRAMBLE. In Utah it easier to comply because you have a tax return that you voluntarily remit on in the State that has an individual income tax. It is much more difficult. Post-Wayfair, that will solve the problem.

Ms. JAYAPAL. Thank you, Senator. I yield back.

Mrs. HANDEL. Thank you. I now yield 5 minutes to myself. First of all, before I get into my questions I really do feel compelled to express my incredible disappointment in the derogatory and inflammatory comments from my colleague from Georgia regarding the U.S. Supreme Court.

While there may not be many members here listening, this is a very important issue that is going to affect every single State in this country, every small business, large business, and every consumer, and I think that we deserve to be focused on this and not distracted in that way.

Most of the States, including my home State of Georgia, are actively involved in the multistate tax commission, the Streamlined Sales Tax Board, the Federation of Tax Administrators, all working together to come to some sort of an agreement around a uniform State law. And while Chairman Goodlatte mentioned the lack of progress on that over the past decade, I wondered if there was, from your perspective, Mr. Cleland, hope in progress in that, or is congressional action really necessary and prudent at this point in time?

Mr. CLELAND. Thank you, Madam Chairwoman. There is always hope. I can say I was part of the streamlined sales tax process for a bunch of years in another capacity. There was always hope that actually something would get decided. That said, I think most of the evidence weighs that it is time for Congress to step in now that we are in a world where the rules are very fuzzy.

And if I may add, my good friend Senator Curt Bramble is a great guy, but context and facts matter. And so, when quoting

ALEC policy, it is pretty important to understand the context. One of our big three, as I pointed out even here today—and he knows; he was on the board, so he was the final say of these principles—is that that was all within the context of federalism.

There is not chance that any ALEC policy has ever been passed to suggest that broadening a tax burden on people who have no way to defend themselves against the government has ever passed ALEC, and never will.

Mrs. HANDEL. Thank you. I have never been, frankly, a big fan of the internet sales tax. With some 25 States already out of the gate with these taxes, it is clear that we need to understand what the framework should be. Let me go to Mr. Norquist. Do you think that the appropriate action from Congress should be a far-reaching bill, or should we try to tackle, at a minimum, prohibiting retroactivity right out of the gate?

Mr. NORQUIST. I would go for as much as you can get, but I think retroactivity is the immediate danger. That's where the assault—I mean any State can say, "We charge you for X amount," and send bills out to people and harass them, deciding on a political basis to make that harassment. You have seen attacks on Chick-fil-a by various cities like Chicago. They could pull this stunt there.

I mean, any number of products and businesses could be got on, based on who is on what board of directors. It is a tremendous political threat to go after people with long threats of retroactivity. So, taking that off the table would be extremely helpful. Delaying implementation until you can get something done I think would be extremely helpful.

But the other questions of protecting against corporate income taxes being sent across State lines, individual income taxes sent across State lines—those are very important. The other team does not care about sales taxes. It is all about corporate and individual income taxes. That is where the money is, despite all the rhetoric. There just is not much cash worth fighting for on internet sales tax.

Mrs. HANDEL. Thank you very much. And with that, that concludes my questions. I recognize my colleague from Rhode Island for 5 minutes.

Mr. CICILLINE. Thank you, Madam Chair. Thank you to our witnesses. I would like to start with you, Mr. Sinewitz. Several witnesses that testified that remote sales tax collections will not be easily implemented across different taxing jurisdictions, particularly for small businesses. Is sales tax compliance software available to determine the correct taxability and rate in all State and local jurisdictions?

Mr. SINEWITZ. I am going to negotiations right now with three different companies. It is going to come down to, basically, how much with a dozen—all retailers. and the answer is for under \$35,000, including implementation I will be able to collect sales tax. One of the stores that we have is in Georgia, and in Georgia, in Atlanta, two houses that live side by side collect different sales tax. And we do that from a brick-and-mortar standpoint, because we have stores in GA.

This software will allow me to go directly into the State, the zip code, and the actual tax of the physical building itself and will

know immediately what sales tax to collect. We will be able to collect it, and then at the end they will file their returns for us, and they will be the ones who will step up and defend us if there is any kind of issue with any individual State.

Mr. CICILLINE. And are there enough competitors in that space to offer different options and to help drive down the prices for what you just described?

Mr. SINEWITZ. There are three major guys right now. My best guess is if Congress does not jump in here and put a huge moratorium on this there will be 20 of them probably within a couple of months, because there is nothing that drives more companies to be in business than if the business is out there. If there is not right now—all these companies that are out there now, their main basis has been helping brick-and-mortar companies. They now see an opportunity to basically now be on the internet.

Mr. CICILLINE. And actually, my next question really relates to what you just said about the moratorium. In his written testimony, Mr. Moylan argues that without a moratorium established by Congress, I am going to quote, “Businesses all across the country, particularly smaller ones that use the internet to help reach wider audiences, face daunting litigation risks and tax compliance responsibilities.” How would you respond to that?

Mr. SINEWITZ. I would totally disagree with that. I mean, the bottom line is they are telling me between 2 and 3 weeks to implement and that they will register—you know, that they want to do what is called the nexus study, which will go in and look at all my sales for the past 12 months. As the senator said, you know, they are on a 90-day basis. These guys want to go back a year.

They will break down all my products; they will find out what is taxable in every State and every district so that if clothes is not in one district, but it is not another, we will know exactly what the taxes are. And this is not an obligation.

And if I might just say, you know, I have been listening; things like, you know, if there is a freight charge, you know, the bottom line here is that freight never cost 8 or 9 percent. And the answer very simply is that our customers, whether they are physically in Georgia or Florida, or whether they are anywhere else, they are customers. That is really what they are. It is not a customer because they live in that State or here.

They are all customers. They all expect to get the best deal that it is possible to get, and it really needs to be that the retailers that can survive and do the best job they can and offer the best solution from a price standpoint as well as a product standpoint, as well as customer service—that is the winners.

Mr. CICILLINE. Right.

Mr. SINEWITZ. Not who taxes.

Mr. CICILLINE. It would also seem to me, if you consider that when the Quill decision was decided in 1992, about 2 percent of the country had access to the internet. You would think that the improvements in technology would now make it significantly easier to track sales across jurisdictions and reduce the burden on remote sellers to collect taxes as a result.

Mr. SINEWITZ. I would doubt that there is a person in this room right now that does not have a smart cell phone that cannot do absolutely everything that a brick-and-mortar store can do.

Mr. CICILLINE. All right. Thank you. Mr. Crosby, I will turn to you. Prior to the Wayfair decision, critics of Federal legislation have said that any solution to the e-fairness problem would be a tax increase. My question is, is it not true that if a retailer does not withhold the sales tax at the point of sale, the consumer still owes the tax as a use tax in States with sales tax?

Mr. CROSBY. Mr. Congressman, absolutely. That has never changed. The liability is there. If the tax is due, it is simply a question of who is collecting and remitting it. It has been interesting to listen to this discussion, because so many of the folks who for years argued against Congress acting are now asking Congress to act, and I do find myself in the odd position of saying, "Perhaps, but there is no urgency now, because the court has done the work for you."

Mr. CICILLINE. And is there any legal support that you are aware of, Mr. Crosby, for the argument that the collection of taxes that are already owed constitutes a new tax?

Mr. CROSBY. No, not economic policy or legal or anything like that.

Mr. CICILLINE. Thank you. Madam Chair, I would ask unanimous consent—actually, Mr. Crosby, according to a 2017 report by the GAO, third-party merchants collected taxes on less than a third of all sales in 2017. Do you think that is an accurate estimate?

Mr. CROSBY. That is probably accurate, yes.

Mr. CICILLINE. And are you aware of plans of Amazon and other commerce platforms that do not currently collect and remit taxes on behalf of third-party merchants to do so following the Wayfair decision?

Mr. CROSBY. I am sure all of them are evaluating the State laws in the wake of Wayfair and making determinations about when they will start collecting on behalf of marketplace participants.

Mr. CICILLINE. Thank you very much. Madam Chair, I would ask unanimous consent to enter into the record an article published earlier this month by David Dayen entitled "Amazon Tax Ruling: Disrupting the Disrupters?"

Mrs. HANDEL. Without—oh, you have more? Okay, go.

Mr. CICILLINE. And I would also ask unanimous consent that letters from the Streamlined Sales Tax governing board and the Coalition of Local Governments, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, the International City and County Management Association, and Government Finance Officers Association be made a part of the record.

Mrs. HANDEL. Without objection, they will be made a part of the record.

Mr. BRAMBLE. Congresswoman, may I respond briefly?

Mrs. HANDEL. I think we are about wrapping up. Do you have more questions?

Mr. CICILLINE. No.

Mrs. HANDEL. All right. That concludes today's hearing. Thank you so much to each of our distinguished members of the panel.

Without objection, all members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record. This hearing is adjourned.

[Whereupon, at 12:10 p.m., the committee was adjourned.]

